

1 DILLINGHAM & MURPHY, LLP
2 WILLIAM F. MURPHY (STATE BAR NO. 82482)
3 STACY A. SMITH (STATE BAR NO. 219034)
225 Bush Street, 6th Floor
San Francisco, California 94104-4207
Telephone: (415) 397-2700
4 Facsimile: (415) 397-3300

5 Attorneys for Defendant Safeway Inc.

6
7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
11

12 JESUS TORRES,

13 Plaintiff,

14 v.
15

16 SAFEWAY INC.,

17 Defendant.
18

Case No. C05-0567 EMC

ANSWER TO COMPLAINT

19 COMES NOW the Safeway SAFEWAY INC. ("Safeway") and answer plaintiff's
20 complaint for damages and preliminary injunction ("complaint") as follows:

21 1. Responding to paragraph 1 of the complaint, Safeway currently lacks information
22 sufficient to respond to the allegation that plaintiff is visually impaired and legally blind, and on
23 that basis only denies said allegations. Safeway currently lacks information sufficient to respond
24 to the allegation that plaintiff is a person with a disability and a physically handicapped person,
25 and on that basis only denies said allegations. Safeway currently lacks information sufficient to
26 respond to the allegation that plaintiff is either unable to use portions of public facilities which are
27 not accessible to the visually impaired or is only able to use such portions with undue difficulty,
28 and on that basis only denies said allegations. Except as expressly stated, Safeway denies each and

1 every allegation contained in paragraph 1 of the complaint.

2 2. Responding to paragraph 2 of the complaint, Safeway admits that it operates a store
3 located at 660 Bailey Road, Pittsburg, California, and that the store is open to the public. Except
4 as expressly admitted, Safeway denies each and every allegation contained in paragraph 2 of the
5 complaint.

6 3. Responding to paragraph 3 of the complaint, Safeway denies each and every
7 allegation contained therein.

8 4. Responding to paragraph 4 of the complaint, Safeway admits that this Court has
9 jurisdiction over this action. Except as expressly admitted, Safeway denies each and every
10 allegation contained in paragraph 4 of the complaint.

11 5. Responding to paragraph 5 of the complaint, Safeway admits that venue is proper in
12 this Court. Except as expressly stated, Safeway denies each and every allegation contained in
13 paragraph 5 of the complaint.

14 6. Responding to paragraph 6 of the complaint, Safeway admits that the assignment of
15 this case is proper in the San Francisco intradistrict. Except as expressly stated, Safeway denies
16 each and every allegation contained in paragraph 6 of the complaint.

17 7. Responding to paragraph to paragraph 7 of the complaint, Safeway admits that its
18 Pittsburg, California store is a "public accommodation or facility". Except as expressly admitted,
19 Safeway denies each and every allegation contained in paragraph 6 of the complaint.

20 8. Paragraph 8 of the complaint does not state any allegation requiring a response.

21 9. Responding to paragraph 9 of the complaint, Safeway admits that it operates a store
22 located at 660 Bailey Road, Pittsburg, California. Except as expressly admitted, Safeway denies
23 each and every allegation contained in paragraph 9 of the complaint.

24 10. Responding to paragraph 10 of the complaint, Safeway currently lacks information
25 sufficient to respond to the allegation that plaintiff is a person with a disability, and on that basis
26 only denies said allegations. Except as expressly stated, Safeway denies each and every allegation
27 contained in paragraph 10.

28 11. Paragraph 11 of the complaint purports to recite the text of statutes, to which no

1 response is required. Except as expressly stated, Safeway denies each and every allegation
2 contained in paragraph 11.

3 12. Paragraph 12 of the complaint purports to recite the text of statutes, to which no
4 response is required.

5 13. Responding to paragraph 13 of the complaint, Safeway denies each and every
6 allegation contained therein.

7 14. Responding to paragraph 14 of the complaint, Safeway denies each and every
8 allegation contained therein.

9 15. Responding to paragraph 15 of the complaint, Safeway denies each and every
10 allegation contained therein, and further denies that plaintiff is entitled to the relief requested, or to
11 any relief at all.

12 16. Responding to paragraph 16 of the complaint, Safeway denies each and every
13 allegation contained therein, and further denies that plaintiff is entitled to the relief requested, or to
14 any relief at all.

15 17. Responding to paragraph 17 of the complaint, Safeway denies each and every
16 allegation contained therein, and further denies that plaintiff is entitled to the relief requested, or to
17 any relief at all.

18 18. Responding to paragraph 18 of the complaint, Safeway denies each and every
19 allegation contained therein, and further denies that plaintiff is entitled to the relief requested, or to
20 any relief at all.

21 19. Responding to paragraph 19 of the complaint, Safeway refers to and incorporates its
22 responses to the allegations contained in paragraphs 1 through 18 of the complaint as though fully
23 set forth herein.

24 20. Paragraph 20 of the complaint purports to recite the text of statutes, to which no
25 response is required.

26 21. Paragraph 21 of the complaint purports to recite the text of statutes, to which no
27 response is required.

28 22. Paragraph 22 of the complaint purports to recite the text of statutes, to which no

1 response is required.

2 23. Paragraph 23 of the complaint purports to recite the text of statutes, to which no
3 response is required.

4 24. Paragraph 24 of the complaint purports to recite the text of statutes, to which no
5 response is required. Except as expressly stated, Safeway denies each and every allegation
6 contained in paragraph 24.

7 25. Responding to paragraph 25, Safeway denies each and every allegation contained
8 therein.

9 26. Responding to paragraph 26 of the complaint, Safeway denies each and every
10 allegation contained therein, and further denies that plaintiff is entitled to the relief requested, or to
11 any relief at all.

12 27. Responding to paragraph 27 of the complaint, Safeway denies each and every
13 allegation contained therein, and that plaintiff is entitled to the relief requested, or to any relief at
14 all.

15 28. Safeway alleges that plaintiff's complaint, and each and every claim purportedly set
16 forth therein, fails to state a claim upon which relief can be granted.

17 **AFFIRMATIVE DEFENSES**

18 29. AS A FIRST AFFIRMATIVE DEFENSE, Safeway alleges that the complaint, and
19 each and every claim purportedly set forth therein, is barred in whole or in part by plaintiff's
20 negligent and/or culpable conduct and/or the negligent and/or culpable conduct of others and that
21 accordingly, plaintiff is entitled to on relief of any kind against Safeway.

22 30. AS A SECOND AFFIRMATIVE DEFENSE, Safeway denies that any loss, damage
23 or injury of any kind or character, of any sum or amount has been suffered by plaintiff by reason of
24 any acts, omissions, carelessness, negligence, or intentional conduct on the part of Safeway, or on
25 the part of any of Safeway's agents, servants, employees, or any other person or persons acting or
26 purporting to act o its behalf, or on behalf of any of them.

27 31. AS A THIRD AFFIRMATIVE DEFENSE, Safeway alleges that Safeway's conduct
28 was privileged and/or justified.

1 32. AS A FOURTH AFFIRMATIVE DEFENSE, Safeway alleges that it acted in good
2 faith and had reasonable grounds to believe that the alleged acts or omissions were not in violation
3 of any statute or regulation.

4 33. AS AN FIFTH AFFIRMATIVE DEFENSE, Safeway alleges that plaintiff, by the
5 exercise of reasonable effort and/or care, could have mitigated the amount of damages alleged to
6 have been suffered, but plaintiff has failed, neglected and refused, and continues to fail and refuse
7 to exercise a reasonable effort to mitigate the damages.

8 34. AS A SIXTH AFFIRMATIVE DEFENSE, Safeway alleges that any recovery on
9 plaintiff's complaint, or any purportedly alleged claim therein, is barred because plaintiff has failed
10 to invoke and exhaust administrative remedies required to be invoked and exhausted prior to the
11 commencement of any action for recovery on the grounds asserted.

12 35. AS A SEVENTH AFFIRMATIVE DEFENSE, Safeway alleges that any recovery
13 or relief on plaintiff's complaint, or any purportedly alleged claim therein, is barred because
14 plaintiff lacks standing to seek some portion or all of the relief sought in the complaint.

15 36. AS AN EIGHTH AFFIRMATIVE DEFENSE, Safeway alleges that to the extent
16 plaintiff relies on certain administrative regulations and other extra-legislative guidelines as a basis
17 for any recovery in this action, said administrative regulations and extra-legislative guidelines are
18 invalid.

19 37. AS A NINTH AFFIRMATIVE DEFENSE, Safeway reserves the right to plead
20 additional defenses, and other matters of defense, to the complaint, by way of amendment after
21 further discovery and investigation.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

PRAYER

WHEREFORE, Safeway prays that the Court order a judgment decree:

1. That plaintiff take nothing by reason of his complaint.
2. That the Court deny plaintiff's request for injunctive relief or any other relief.
3. For attorneys' fees.
4. For costs of suit.
5. For such other relief as the Court deems just and proper.

Dated: April 28, 2005

DILLINGHAM & MURPHY, LLP
WILLIAM F. MURPHY
STACY A. SMITH

/s/

By: _____
Attorneys for Defendant SAFEWAY, INC.